

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN

In re )  
CITY OF DETROIT, MICHIGAN, ) Chapter 9  
Debtor. )  
 ) Case No. 13-53846  
 )  
 ) Hon. Steven W. Rhodes  
)

**THE OBJECTORS' PROPOSED HEARING PROCEDURES TO STREAMLINE THE  
PRESENTATION OF EVIDENCE AT THE SEPTEMBER 23-24 HEARING ON THE  
CITY'S MOTION TO ASSUME AND APPROVE THE FORBEARANCE AND  
OPTIONAL TERMINATION AGREEMENT**

The undersigned Objectors submit this proposal for hearing procedures in connection with the September 23-24 evidentiary hearing on the City's motion (the "Assumption Motion")<sup>1</sup> to assume the Forbearance Agreement.<sup>2</sup> Eleven of the 12 Objecting Parties are in agreement with the proposed procedures and have joined in this submission. The non-joining Objector has not voiced an objection to the proposed procedures. The City has refused to concur in this proposal.

## Introduction

As the Court is aware, a hearing on the Assumption Motion is currently scheduled for September 23 and 24, 2013. The Court has allotted nine hours of time for the hearing, with four hours for the City and five hours for the 12 Objectors. Within their respective time allotments, the City and Objectors must present all of their witnesses and argue their respective positions.

<sup>1</sup> See Motion of Debtor for Entry of an Order (I) Authorizing the Assumption of that Certain Forbearance and Optional Termination Agreement Pursuant to Section 365(a) of the Bankruptcy Code, (II) Approving Such Agreement Pursuant [to] Rule 9019, and (III) Granting Related Relief [Docket No. 17].

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Assumption Motion.

The Objectors are concerned that live witness testimony may take up much of the nine hours of hearing time, leaving insufficient time for argument. The direct and cross examinations of a witness — even testifying on a discrete subject — commonly requires forty-five minutes of court time. The subjects on which the City proposes to examine Messrs. Orr, Buckfire and Malhotra (its three designated witnesses) are not discrete. They run the gamut from the COPs/Swap structure, to the City's financial condition, to the negotiations with the Swap Counterparties. Even a well-designed cross and direct examination of these witnesses in a two-party dispute could easily consume 2.5 hours of court time for each witness -- leaving little time for rebuttal witnesses and argument. And, with 12 Objectors having filed Objections, this is obviously no mere two-party dispute.

The Objectors believe that a more efficient way to present evidence would be to present it via deposition designation, agreed admission of documentary evidence, and stipulation. No party would call any live witnesses. Instead, all witnesses would be available in court to respond to any subject matter areas on which the Court determines it wants to hear more. Live testimony would thus be used in a targeted fashion, with the targets set by the Court. The result would be a dramatic streamlining of the evidence, which would, in turn, increase the amount of time for the parties to engage in colloquy with the Court regarding their respective positions.

The Objectors' specific proposal works as follows:

- Reliance on Deposition Designations and Stipulated Admission of Documents. In lieu of live testimony, the parties would rely on deposition designations and stipulated admission of relevant documents (subject to the limited exception in the third bullet below). Deposition designations for Messrs. Orr and Buckfire would be filed with the Court by **Thursday, September 12** and counter designations by **Tuesday, September 17**. Deposition designations for Mr. Malhotra would be filed with the Court by Monday, September 16 and counter-designations by **Thursday, September 19**. Later taken depositions of rebuttal witnesses (which have not yet been scheduled) would be designated and counter designated on an expedited basis to have them filed in advance of

the hearing. Form objections would be taken under advisement by the Court. Relevance objections would be presented by motion in limine.

- Narrow the issues by use of proposed findings and conclusions. The parties would exchange proposed Findings of Fact and Conclusions of Law by **Monday, September 16**, and provide responses to each (with citation to the record supporting the basis for dispute) by **Thursday, September 19** so that the combined document showing both the proposed finding or conclusion and the basis for any dispute could be filed with the Court by **Friday, September 20**.
- Allow direct testimony by declaration for rebuttal witnesses whom the City elects not to depose. The Court will permit direct testimony by declaration for Objector rebuttal witnesses who are not deposed by the City so long as those witnesses are available in court for cross examination. To the extent the City deposes all of the rebuttal witnesses, their testimony would come in via designation, as provided for in the first bullet above. Other than Messrs. Orr, Buckfire, and Malhotra and any designated rebuttal witnesses, there shall be no other witness testimony.
- Have witnesses present in Court to respond to discrete subject matter areas about which the Court determines it needs to know more. All witnesses will be present in Court to be able to respond to specific areas of inquiry if requested by the Court. The only live testimony presented will be on those subjects specifically requested by the Court.

The Objectors believe that the proposed hearing procedures will streamline the presentation of evidence without impairing the Court's ability to seek targeted testimony on specific topics. This will hopefully reserve more time for argument of the numerous objections that have been lodged to the Assumption Motion. In general, the proposed procedures require that the parties do additional work organizing the evidence out-of-court with the aim of minimizing the amount of time spent introducing evidence in court. The City opposes this proposal on the basis that the hearing on the assumption motion is not a "mini-trial," and, as a result, claims that the joining Objectors' proposed procedures are "uncalled for." Instead, the City proposes that all testimony regarding this matter be conducted live and all proposed findings of fact and conclusions of law be submitted after the record is closed.<sup>3</sup>

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<sup>3</sup> The joining Objectors' proposal to submit proposed findings of fact prior to the hearing is intended to assist the Court by framing the issues and providing a record of and basis for the disagreements between the City and the

There is an obvious cost to the proposal: it likely imposes significant “homework” on the Court in preparation for the hearing. The Objectors do not mean to be presumptuous with the Court’s time and are mindful of the many other parts of the case that are demanding the Court’s time and attention. With a nine hour limit on the hearing, however, in-court time is at a premium, and the proposed hearing procedures are an attempt to use the in-court time as efficiently as possible.

Respectfully submitted,

Dated: September 9, 2013

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joining Objectors. As noted, the joining Objectors believe that this proposal will streamline the proceedings and allow the parties and the Court to focus on the central issues in this dispute.

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